

From: Borre Winckel [<mailto:Borre@biasandiego.org>]

Sent: Wednesday, January 08, 2014 12:23 PM

To: Kevin Crawford

Cc: Don Neu; Kathy Dodson; Debbie Fountain; Jane Mobaldi; David de Cordova; Gary Barberio; Celia Brewer; Matt Adams; Mike McSweeney

Subject: RE: BIA PROTEST: Case Name:. MCA 13-02, Previously Known As Resolution No. 2013-003; Affordable Housing Impact Fee – January 9, 2014, Hearing by the Carlsbad Housing Commission.

Dear Mr. Crawford,

While we suspect that – despite our protest – your Housing Commission shall pass subject Resolution tomorrow, we thought it might be helpful to the City Attorney if we shared and clarified at least some of our legal thinking underlying our position that the move shall be legally invalid. I offer a memo which was provided to us by an attorney whom the industry regards as an undisputed expert on the “Nexus Doctrine.” The memo was originally prepared to help us understand the flaws in the Keyser Marston study and the legal theory pursued by the City of San Diego when it adopted the controversial “Linkage Fee.” The fate of this Fee, as you may know, is currently subject to a signature petition drive which is designed to allow the voters of San Diego the opportunity to pass judgment on this costly approach to funding affordable housing. Polling information tells us the measure would pass by a comfortable margin.

While San Diego’s stepped-up affordable housing impact fee shall apply to non-residential project, many of our legal objections find a parallel in the fee construct which is presently before your Housing Commission. You will find that your consultant Keyser Marston’s “analysis and nexus findings” is pure boiler plate documentation consisting of the identical methodology it prepared for any number of city clients. Were we to go along with their theory, well then manufacturers of baby cribs are directly responsible for the birth of babies.

We agree with Ms. Susan Tinsky when she applauds your City for the (legally) courageous step it takes by adopting this new fee on rental housing. We wish though that this courage and energy was directed at convening the industry to come up with a less punitive approach to fixing the funding crisis, rather than looking to our members to come up with vast sums of new capital to fix a problem which is NOT of their making. Please do not take this email as a combative move on our part. It is our role to avoid conflict and to come up with solutions to the challenges and issues which both you and our members face.

We repeat our position that we are all better off if we just wait with passing the next (increased) Impact Fee until the State Supreme Court has ruled on CBIA v. San Jose, which is on point to our objection to your proposal.

Sincerely,



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